

WHITE PAPER
SEPARATE AD VALOREM TAXATION
OF MULTIPLE PARCEL BUILDINGS

I. SUMMARY

This legislation provides for the separate assessment of separate portions of multiple parcel buildings, which portions are vertically located, in whole or in part, on or over the same land. The legislation directs county property appraisers to apportion the value of the underlying land and include it in the assessed values of the separate parcels in the multiple parcel building.

II. CURRENT SITUATION

When multiple parcel owners share a single tax folio number, each owner's parcel is at risk for a tax deed sale unless someone pays the entire single tax bill. Even if the parcels are all vested in one owner, the same issue arises if the parcels have different mortgagees—each mortgage lien is at risk of being primed by real estate taxes unless the entire bill is paid. The primary purpose of this proposed legislation is to enable county property appraisers to assign separate tax folio numbers for multiple parcel buildings and to eliminate this concern.

Under current law (FS §193.023), the value of common elements or common areas in a condominium or cooperative is not separately assessed for ad valorem taxes or other governmental assessments; rather, the value of such property is included in the assessment of each unit. Similarly, FS §193.0235 provides that common elements in a subdivision are not separately assessed but the value of such property is included in the assessments for the subdivision lots. These provisions are exceptions to the general rule that the property appraiser's assessment roll must include certain land characteristic details, including the land value (FS §193.114(2)(j)).

There is no statute in Florida prohibiting the vertical subdivision of real property, and a number of multiple parcel buildings in Miami-Dade County have been developed or are currently being developed without utilizing a condominium regime. Typically, the separate parcels are described by using vertical elevation information and are based on the dimensions of as-built improvements. Some of the parcels may include a portion of the underlying land, but the common characteristic of these projects is the vertical sharing of the land, in whole or in part, by two or more portions of the improvements located on or above the same land.

The Florida Statutes do not guide the county property appraisers in assigning separate tax folio numbers for the separately owned parcels or (unlike the condominium and subdivision exceptions noted above) in allocating the value of the underlying land among those parcels located on or above the same land. Because of this statutory silence, Joseph Ruiz, the general counsel for the Miami-Dade Property Appraiser, reached out for RPPTL Section help in addressing the need for separate assessments for such multiple parcel buildings.

Quoting from Mr. Ruiz's email: "[T]he issue of air rights/ vertical subdivisions has become a hot topic, especially in light of the upswing in construction in South Florida. By way of background, where there is a divided-ownership structure, the Miami-Dade County Property Appraiser's Office does not issue separate folio numbers for each ownership interest, absent the use of a condominium structure. As a result, multiple owners and properties within a single structure are issued a single ad valorem tax bill. While I can only speak for MDC, I am almost sure the same goes for all counties throughout the state. This can become burdensome for mixed-use high rise developments who choose not to avail themselves of a condominium structure, which may not provide them the flexibility required for that type of use."

As an example, the existing Four Seasons Hotel project on Brickell Avenue in Miami is encumbered by a recorded document that establishes a separate hotel parcel, office parcel, spa parcel, and two separate condominium parcels (one for the residences and one for condominium hotel units), with each parcel having separate ownership, notwithstanding that they are all contained in a single structure. Although separate tax folios were created for the condominium units, the other separately owned parcels of the structure share a single tax folio. Other existing and proposed projects in Miami-Dade County involve structures combining multiple uses - retail, hotel, office, parking, residential etc., each of which should be capable of separate ownership and entitled to their own tax folio assignment.

III. EFFECT OF PROPOSED CHANGES

A. General Overview

This legislation is intended to help county property appraisers respond to the market demand for separate tax folio numbers for the separate parcels located in a multiple parcel building. It is modeled on the similar existing statutory provisions dealing with the taxation of common elements and common areas in condominium projects and horizontal lot subdivisions (FS §193.023 and §193.0235).

B. Point by Point Analysis

1. Allocation of land value among parcels.

Proposed new subsection 193.0237(1) would provide that the value of the land underlying a mixed parcel building is not separately assessable, but must be apportioned among the various parcels in the building and included in their assessed values. Under subsection (3), the allocation of land value would follow the apportionment scheme in the recorded instrument that describes the separate parcels, by analogy to the existing method of distributing common element value among condominium units in accordance with their respective percentages established in the recorded declaration of condominium. If no apportionment scheme is provided in a recorded instrument, then this statute directs the property appraiser to allocate the land value among the parcels in proportion to their vertical and horizontal size (i.e., the amount of "airspace") relative to the building as a whole. Either way, this statute directs that ALL of the land value must be allocated among the parcels, so

there is no opportunity for lost tax revenue from undervaluing the land in the final aggregate assessed parcel values.

2. Separate tax folio numbers.

Separate taxation is a key concern when different owners own different parcels within a multiple parcel building. Subsection (5) provides that each parcel in a multiple parcel building must be assigned its own tax folio number. If a condominium or cooperative is created within any such parcel, then the respective condominium or cooperative units (rather than the parcel) would receive the separate folio number. Subsection (4) provides that the land value apportioned to a parcel containing a condominium or cooperative is to be further apportioned among the units in accordance with existing law. Subsection (6) provides that the aggregate of the assessed parcel values cannot exceed the land and building value that would be assigned if the building did not comprise multiple parcels.

3. Definitions.

Subsection (2) of the proposed statute defines certain key terms. The term “multiple parcel building” means a building, other than a condominium or a cooperative, that contains separate “parcels” that are vertically located, in whole or in part, over the same land. The term “parcel” means a portion of such a building, which portion is identified in a “recorded instrument” by a legal description that is sufficient for record ownership and conveyance by deed separately from any other portion of the building. The term “recorded instrument” means a declaration, covenant, easement, deed, plat, agreement or other legal instrument, other than a lease or mortgage or lien, describing one or more parcels in a multiple parcel building and recorded in the county where the building is located.

These definitions embody some key concepts. One is that the statute excludes condominiums and cooperatives. Another is that the statute applies only if two or more portions of the building share, at least in part, a vertical location on or over the same land. Townhouse developments, therefore, would not fall under this definition because each unit sits on its own parcel.

The definition of “recorded instrument” encompasses a variety of instruments that are typically recorded in connection with a multiple parcel building, such as an declaration of easements and/or covenants governing the operation of the project. The recorded instrument could be as simple, however, as a deed conveying “air space” with defined elevations. Instruments such as leases, mortgages or liens are excluded from the definition, however, as they typically do not contemplate separate ownership of the parcels and could impose an unnecessary burden on property appraisers. Although this proposed solution for separate tax folios will be favored by mortgage holders, it will take more than a mortgage to produce a separate tax folio number for the lender’s benefit (say, a mortgage PLUS a declaration of covenants).

Another key concept is that the recorded instrument need not actually create separate ownership of the separate parcels; rather, it must contain a sufficient legal description for separate ownership of one or more parcels. In this regard, the definition contemplates that the recorded

instrument will result in separate tax folio numbers much like a condominium declaration or subdivision plat, even though the developer initially owns all of the units. Unlike a condominium declaration or subdivision plat, however, the recorded instrument will not result in discrete unit or lot identification numbers that are sufficient for a short form of legal description. Someday Florida may adopt three-dimensional subdivision platting, but that will not result from this proposed legislation. If three-dimensional platting is ever adopted in Florida, however, this proposed tax assessment statute will still work because it contemplates that a plat can be a “recorded instrument.”

4. Timing.

Under existing law, improvements are not included in the assessed value of real property until they are substantially completed. Similarly, this separate folio statute does not apply in a particular assessment year unless the multiple parcel building is substantially completed on January 1 of the assessment year. As a practical matter, most multiple ownership buildings are completed before any document containing as-built legal descriptions are recorded. As a result, this proposed legislation will not require property appraisers to assign tax folio numbers for pure “air space” parcels containing no completed improvements.

The effective date of the legislation need not be as early as “upon becoming a law” as indicated in this draft, and it would apply to tax years beginning in 2015. If the legislation is not adopted in 2014, then the first applicable tax year would move back accordingly.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments because it does not increase or reduce the assessed values of any property that would otherwise apply if a building is not a multiple parcel building. Implementation costs should not be material, as there are only a limited number of such projects existing now, and most if not all are already known to the county property appraisers because the developers have previously requested separate tax numbers.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This legislation benefit the private sector by encouraging and facilitating the development of multiple parcel buildings, making more efficient usage of limited land resources in urbanized areas.

VI. CONSTITUTIONAL ISSUES

It is anticipated that this legislation will not raise constitutional issues.

V. OTHER INTERESTED PARTIES

Other groups that will be interested in or affected by the proposed legislation include the title insurance industry and lenders wishing to finance multiple parcel buildings with mortgage loans.